Supreme Court, U. S.
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No. 80-519

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

NELSON OIL COMPANY, INC.,

Petitioner,

-vs-

SHELL OIL COMPANY,

Respondent.

APPENDIX
TO PETITION FOR A WRIT OF CERTIORARI TO THE TEMPORARY EMERGENCY COURT OF APPEALS

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TABLE OF CONTENTS

APPENDIX A

OPINION OF THE TEMPORARY EMERGENCY COURT OF APPEALS OF THE UNITED STATES, SHELL OIL COMPANY, Plaintiff-Appellee v. NELSON OIL COMPANY, INC., Defendant-Appellant, No. 9-47, July 21, 1980

APPENDIX B

DENIAL OF NELSON OIL COMPANY'S PETITION FOR REHEARING, TECA, No. 9-47, September 2, 1980

APPENDIX C

FINDINGS OF FACT AND CONCLUSIONS OF LAW, U. S. DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA (Hon. Manuel Real), SHELL OIL COMPANY v. NELSON OIL COMPANY, CV 79-694-R, filed November 23, 1979

APPENDIX D

JUDGMENT, U. S. DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA (Hon. Manuel Real), SHELL OIL COMPANY v. NELSON OIL COMPANY, CV 79-694-R, entered December 5, 1979

APPENDIX E

ORDER TO REMAND (28 U.S.C. 1447(c)), U. S. DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA, (Hon. Robert Firth), NELSON OIL COMPANY, INC. v. SHELL OIL COMPANY, et al., CV 78-3790-RF, entered December 27, 1978;

and

ORDER PURSUANT TO RULE 60, U. S. DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA, (Hon. Robert Firth), NELSON OIL COMPANY, INC. v. SHELL OIL COMPANY, CV 78-3790-RF, filed July 25, 1979

APPENDIX F

ORDER TO REMAND (28 U.S.C. 1447(c)), U. S. DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA (Hon. David Williams), NELSON OIL COMPANY v. SHELL OIL COMPANY, et al., CV 80-03184-DWW, filed August 19, 1980

APPENDIX G

ECONOMIC STABILIZATION ACT OF 1970, 12 U.S.C. §1904, note §§210, 211 [pertinent parts]

APPENDIX H

EMERGENCY PETROLEUM ALLOCATION ACT OF 1973, 15 U.S.C. §751 et seq. [pertinent parts]

APPENDIX I

28 U.S.C. §1447(d)

APPENDIX J

10 C.F.R. §211.13(f)

APPENDIX A

OPINION OF THE TEMPORARY EMERGENCY COURT OF APPEALS OF THE UNITED STATES, SHELL OIL COMPANY, Plaintiff-Appellee v. NELSON OIL COMPANY, INC., Defendant-Appellant, No. 9-47, July 21, 1980

TEMPORARY EMERGENCY COURT OF APPEALS

OF THE UNITED STATES

No. 9-47

SHELL OIL COMPANY, PLAINTIFF-APPELLEE,

v.

NELSON OIL COMPANY, INC., DEFENDANT-APPELLANT.

Appeal from the United States District Court for the Central District of California

(No. CV 79-694-R)

(Argued: May 9, 1980

Decided: July 21, 1980)

JOHN G. KESTER, of Williams & Connolly, Washington, D.C., with whom Philip J. Ward, of the same firm, and Jerome H. Craig, Warren L. Ettinger and Evelyn Balderman, of Beardsley, Hufstedler & Kemple, Los Angeles, California, were on the brief for defendant-appellant.

WILLIAM O'BRIEN, of Howrey & Simon, Washington, D.C., with whom William Simon and Eugene M. Katz, of the same firm, and Max L. Gillam, Philip F. Belleville and Alan B. Clark, of Latham & Watkins, Los Angeles, California, were on the brief for plaintiff-appellee.

William W. Scott, of Collier, Shannon, Rill & Scott, Washington, D.C., was on the brief for amicus curiae.

Before: JAMESON, DUNIWAY and ZIRPOLI, Judges.

DUNIWAY, Judge:

Nelson Oil Company (Nelson) appeals from a decision of the district court finding Nelson in violation of the Department of Energy (DOE)'s gaso-

line allocation regu-[2]lations, 10 C.F.R. §211 et seq., awarding to Shell Oil Company (Shell) $617,308.98 in damages, and granting an injunction decreasing Nelson's base period gasoline allocation by 17,936,929 gallons annually. We affirm.

I. THE FACTS

DOE regulations, 10 C.F.R. Part 211, Subpart F, §§211.101 et seq., promulgated under the Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 751 et seq., govern the amount of motor gasoline which a supplier is required to allocate and sell to its customers. The allocation amounts are based on the historic or base period use of its customers, with appropriate adjustments. Until the amendment of the DOE regulations in March, 1979, the "base period" for establishing

monthly allocations was the corresponding month of 1972. In March, 1979, the base period was changed and currently is the corresponding month during the period November 1, 1977 through October 31, 1978, 44 Fed. Reg. No. 41, 11202 (February 28, 1979).

Nelson is a wholesale jobber of Shell motor gasoline and other petroleum products, and therefore, a wholesale purchaser-reseller, 10 C.F.R. § 211.51. At all relevant times Nelson and Shell have had a supplier-purchaser relationship, 10 C.F.R. § 211.9. Accordingly, Nelson has been entitled to receive gasoline from Shell in accordance with DOE allocation regulations.

As of March, 1976, when Nelson's present owner, John D. Castellucci, acquired Nelson, its adjusted base

period gasoline allocation was approximately 494,500 gallons per month, or 5.9 million gallons per year. This was the volume which Shell was obligated to supply to Nelson under the contract entered into by the parties at that time.

[3] Soon after Castellucci acquired Nelson, he began to use DOE upward certification regulations to increase the amounts of gasoline Shell was required to supply to Nelson. Nelson sought and received from DOE numerous orders assigning new wholesale purchasers to Nelson, 10 C.F.R. § 211.12. In each instance, Nelson asked that its allocation of gasoline from Shell be increased to allow Nelson to supply the new customers, 10 C.F.R. § 211.13. As a result of this upward

certification procedure, Nelson's annual gasoline allocation from Shell increased by over 33 million gallons. Shell was obliged to and did supply Nelson its full monthly allocation (or allocation fraction) for each month during the period January, 1976 through May, 1979.

Each DOE assignment order issued to Nelson specifies the retail outlet which is being assigned and the allocation volume to be supplied by Nelson to the retail outlet. In applications submitted to DOE by the retail outlets, Nelson, as a prospective new supplier, expressly affirmed that it was a willing supplier of the retail outlet, and that if the application were granted, Nelson would supply to the applicant the volume of gasoline set forth in the

application. In addition, beginning in January, 1977, Nelson certified in writing to Shell that the additional gasoline supplied pursuant to Nelson's upward certification would be used only for the use stated in the application--sales to the retail outlet designated in the DOE assignment order.

This certification by Nelson was required by 10 C.F.R. § 211.13(f), which states:

> Such application [for upward certification] shall contain a statement that increased allocations shall be used for the purpose stated in the application, shall not be diverted for other uses; and that if its needs decline, the purchaser shall file an amended [4] ap-

plication for a downward adjustment to its base period use.

In fact, Nelson did not supply any gasoline to many of the DOE assigned retail outlets. Nor did Nelson return such gasoline to Shell. Rather, Nelson sold large volumes of the gasoline to other retail outlets, including five outlets that Nelson operated which had either no allocation orders or adjusted base period entitlements much lower than the amounts that were actually supplied to them.

The district court found that during the period from September, 1976 through May, 1979, Nelson had either totally failed to supply or had not supplied on a regular basis fifteen DOE assigned retail outlets having an annual allocation of almost 18 million

gallons. Nelson did not seek downward adjustment of any of its certifications during this period.

Shell expressed concern to DOE that Nelson and other jobbers were abusing the regulatory system through the techniques described above. When DOE took no action, Shell filed this action to enforce DOE regulations on February 20, 1979, seeking damages, injunctive relief and a declaratory judgment that Nelson's conduct justified termination of its jobber contract under the Petroleum Marketing Practices Act (PMPA), 15 U.S.C. § 2801 et seq.[1]

---

[1]The claims stated by Shell in its complaint were originally pleaded in a counterclaim against Nelson in an action charging unfair competition brought by Nelson. Shell removed that case to federal court and thereupon filed its counterclaim. That case was remanded to state court in December, 1978. Be-

On April 20, 1979, Nelson filed an answer [5] and counterclaim asserting three violations by Shell of DOE regulations. On Shell's motion, the district court dismissed two of the claims as insufficient as a matter of law, and the third claim, that Shell had redistributed "underlifted"[2] gasoline to Nelson in a discriminatory manner, proceeded to trial.

(cont'd 1) cause federal courts have exclusive jurisdiction over the claims raised by Snell, (Economic Stabilization Act of 1970, § 210, 12 U.S.C. § 1904 note) Shell filed an independent action in federal court following the remand in order to pursue its claims in the proper forum.

[2]"Underlifted" gasoline is gasoline allocated to a retail outlet which that outlet does not purchase because of insufficient demand from the outlet's customers.

At trial, the judge ruled in favor of Shell on both the complaint and counterclaim. The district court held that § 211.13(f) of the DOE regulations required that Nelson downward certify to Shell the annual volume of gasoline obtained by Nelson from Shell pursuant to assignment orders on fifteen retail outlets, whose annual allocations Nelson had diverted to other uses. The court held that Nelson's diversion of this gasoline amounted to a willful and blatant violation of the DOE regulations, and that Shell had been injured by it. The court therefore entered an injunction reducing Nelson's annual adjusted base allocation from Shell by the 17,936,929 gallons accounted for by the upward certifications received by Nelson for

the fifteen outlets. The court further found that the total amount of gasoline obtained from Shell and wrongfully diverted to other uses was 20,440,695 gallons.[3] It awarded Shell damages of $617,308.98.[4] [6] With regard to Nelson's counterclaim, the trial judge ruled that Shell's method of distributing underlifted gasoline was a fair,

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[3]In arriving at this figure, the court reduced the total underdeliveries to the fifteen accounts by 30%, giving Nelson the benefit of the redirection provisions of 10 C.F.R. § 211.06(b)(3)(iii).

[4]The court further held that Shell had proper and sufficient grounds to terminate Nelson's jobber contract under Sections 2802(b)(1)(B) and (c)(11) of the PMPA. We do not consider this further holding. Nelson has appealed this portion of the district court's decision to the Court of Appeals for the Ninth Circuit and no disposition has yet been made by that court.

proper and rational method of accomplishing such redistribution and fully complied with the applicable regulations.

II. JURISDICTION

Nelson argues that the central dispute in this case--the application of 10 C.F.R. § 211.13(f) to the situation involved here--was within the primary jurisdiction of the DOE, and that the district court erred in not deferring to this primary jurisdiction. We disagree.

Section 210 of the Economic Stabilization Act of 1970 (12 U.S.C. § 1904, note) provides for a private right of action in federal district courts and states in pertinent part:

> (a) Any person suffering legal wrong because of any act or

> practice arising out of this title, or any order or regulation issued pursuant thereto, may bring an action in a district court of the United States, without regard to the amount in controversy, for appropriate relief, including an action for a declaratory judgment, writ of injunction . . . and/or damages.

Thus, the district court had jurisdiction.

However, jurisdiction in the district court is only a first step in the inquiry into whether an administrative agency has primary jurisdiction over a case. The doctrine of primary jurisdiction does not determine whether the court will ultimately decide an issue,

it merely decides whether the court will postpone such a decision to allow an administrative agency to make the initial decision. See Writers Guild of America v. American Broadcasting, 9 Cir., 1979, 609 F.2d 355, 363. See also, 3 [7] Davis, Administrative Law Treatise § 19.01 at 205 (1958).

When a trial court has jurisdiction over the subject matter of a lawsuit as it did here,[5] the determination

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[5]Nelson's argument that the district court did not have subject matter jurisdiction over Shell's claim because that claim was identical to the counterclaim remanded to the state court along with Nelson's unfair competition suit is wrong. Federal courts have exclusive jurisdiction over the claims raised by Shell, see note 1, supra. Because the state court is unable to consider Shell's counterclaim, it was appropriate for Shell to file an independent action in federal court following the remand in order to pursue its claim in the proper forum.

of whether to defer to a regulatory agency with concurrent jurisdiction is controlled by a determination as to whether the reasons for the existence of the doctrine of primary jurisdiction will be forwarded by its application. United States v. Western Pacific R. Co., 1956, 352 U.S. 59, 64. Uniformity of regulations and the use of the expert and specialized knowledge of the agency are most often cited as the basis for the doctrine. See Far East Conference v. United States, 1952, 342 U.S. 570, 574-575.

The doctrine of primary jurisdiction does not apply where the only task facing the district court is to "determine the meaning of words . . . which were used in their ordinary sense and to apply that meaning to the undisputed

facts." Great Northern Railway v. Merchant's Elevator Co., 1922, 259 U.S. 285, 294.

Here, the district court found that the regulations, particularly 10 C.F.R. § 211.13(f), were clear, and proceeded to apply them to the fact situation involved. There was no question involved as to the validity or the reasonableness of the regulations, see Nader v. Allegheny Airlines, Inc., 1976, 426 U.S. 290, 304, 306, but merely whether the regulations had been violated, see United States Tour Operators Ass'n v. Trans World Airlines, [8] Inc., 2 Cir., 1977, 556 F.2d 126, 130. Application of the regulation did not require the specialized expertise of the DOE. See Nader, supra, 426 U.S. at 304-305. Jurisdiction in the district court was proper.

Nor is this case one in which the agency has primary jurisdiction because of ongoing agency proceedings. The agency proceedings cited by Nelson, while involving downward certification, concern the extension of downward certification regulations to all customers rather than merely to new customers assigned pursuant to § 211.12(e) and § 211.13(c). See 44 Fed. Reg. 69963. These rule-making proceedings are not useful in clarifying the already clear regulatory structure of § 211, the violation of which Shell is asserting. Nor is this a case in which pending administrative proceedings consider the issues adjudicated here. Thus, DOE need not be deferred to because of such proceedings.

III. VIOLATION OF 10 C.F.R. § 211.13(f)

Nelson does not challenge the sufficiency of the evidence to support the district court's findings. Rather, it claims that the district court misinterpreted the downward certification regulation. This claim is based on two alternate arguments: First, Nelson argues that no downward certification was required until its "supply obligation" to its retail outlet customers was formally terminated by DOE. Second, Nelson argues that the recently proposed downward certification regulations confirm that there was no such obligation under existing regulations. Each of these arguments is without merit.

10 C.F.R. § 211.13(f) clearly states Nelson's obligations to Shell,

its supplier, when applying for an upward adjustment of its allocation based on a DOE assignment. See the regulation, supra, pages 3 and 4.

[9] Moreover, in May, 1977, Nelson filed a Request for Interpretation with DOE with respect to the certification requirement of § 211.13(f). Nelson argued that it was required to certify only that an increased allocation would be used for resale to wholesale purchaser-resellers as a class and that, therefore, downward certification would be necessary only if its total needs for gasoline for resale were to decline, and not if its needs with respect to the particular outlet named in the assignment order declined. In Interpretation 1978-24, 43 Fed. Reg. No. 112, 25079 (June 9, 1978), DOE rejected

Nelson's contentions, stating that the certification provision of § 211.13(f) applies to a specific volume of product allocated to each assigned new customer, and not to broad categories of general uses. Thus, downward certification was required if Nelson's needs to supply any particular assigned location declined.

Nelson's conduct did not change in response to this DOE Interpretation. Nelson argues that its "needs to supply" do not decline until its "supply obligation" to its customer is formally diminished or terminated by DOE. This argument is undercut also by this statement in the DOE Interpretation:

> Thus, if the new assigned customer ceases purchasing the

> motor gasoline from it, Nelson argues that the additional product becomes surplus which may be disposed of by Nelson to other firms. . . .
>
> Nelson's construction of § 211.13 (f) is incorrect. (emphasis added) 43 Fed. Reg. No. 112 at 25082.

Nelson argues that it had no obligation to downward certify because it was required to hold available the additional volume of gasoline in the event that the assigned customer demanded to be supplied in the future. This argument fails. Section 211.13(f) imposes an obligation to downward certify with no mention of DOE intervention to terminate an assigned customer's alloca-[10]tion. It requires downward

certification whenever the applicant's needs to supply a new customer cease or are substantially reduced. This requirement is clear. If a more complicated regulatory scheme had been envisioned, it would have been specified.

Nelson's argument that the upward and downward certification procedures ought to be symmetrical, each triggered by a DOE assignment or reassignment of a retail customer to a wholesale purchaser-reseller, has some appeal in the abstract. However, that appeal rapidly disappears when the downward certification regulation is examined. Not only does the regulation require downward certification if the wholesale purchaser-reseller's needs decline, with no mention of DOE action as a pre-

requisite, but it also requires the wholesale purchaser-reseller to certify that the portion of its gasoline allocation which increases because of upward certification will be used for a single purpose--to supply the newly assigned customer. When these two provisions are read together, it becomes obvious that the upward and downward certification regulations are not symmetrical.

This obvious interpretation of the regulation is not in conflict with statements of Nelson that retail outlets regularly purchase from non-assigned wholesalers and that the readjustment in the base period recently adopted condones such action. The downward certification requirement of § 211.13(f), unlike that in the proposed new regu-

lations, applies only to decreases in need attributable to new customers or to increased demand of base period customers assigned to the wholesaler after the base period. In other words, only supply obligations resulting from upward certification are affected by § 211.13(f) downward certification provisions.

It also cannot be argued that Nelson in fact had a continuing supply obligation to serve customers such as its Sav-Mor accounts when Sav-Mor had expressly can-[11]celled Nelson's supply contract and purchased virtually no gasoline from Nelson. Nor can it be argued that Nelson had a continuing supply obligation to retail outlets that were permanently closed, were selling other major brands of gasoline,

or had never been supplied by Nelson at all.

Nelson's contention that it could not downward certify because its assigned customers might demand gasoline in the future also fails. Nelson does not show that it could not downward certify with respect to the customers involved and upward certify at a later date if the customer demanded gasoline from Nelson. Furthermore, the evidence shows that Nelson, in one instance, refused to honor the request of an assigned customer for its allocated supply and, in another instance, effectively did the same by imposing unusually stringent credit terms on its offer to supply.

Nelson's alternative reliance on the recently proposed downward certi-

fication regulations is similary unavailing. The proposed rules are described by DOE as "general downward certification provisions," 44 Fed. Reg. No. 235, 69963 (December 5, 1979), and would require downward certification with respect to base period customers as well as newly assigned customers whose assignment was accompanied by upward certification. Rather than suggesting that there was no downward certification procedure in the existing regulations, the DOE's Notice cf Proposed Rulemaking explicitly recognized the § 211.13(f) downward certification requirement:

> 10 C.F.R. 211.13(f), the only current provision dealing with downward adjustments is limited in scope. It applies where a

> wholesale purchaser-reseller that has received an upward adjustment to its base period use based on an increased supply obligations to one of its purchasers subsequently terminates or sig-[12]nificantly reduces its supply obligation to that purchaser.

This statement does not support the narrow view of the downward certification requirement suggested by Nelson. By referring to a supply obligation terminated or reduced by the wholesale purchaser-reseller, again with no reference to any formal termination by DOE, this statement is consistent with the interpretation of § 211.13(f) adopted by the district court and now affirmed by this court.

The district court correctly held that § 211.13(f) required Nelson to use the gasoline it obtained from Shell as a result of upward certification only for the purposes stated in the assignment orders--to supply the allocated gasoline to specific retail outlets--and not to divert the gasoline to other uses. Nelson was further obligated to downward certify to Shell when it no longer needed the allocated gasoline to supply the designated outlets. Under the facts here establishing continuous diversion of large volumes of gasoline from other assigned outlets to Nelson's own retail outlets and to other uses, the district court correctly found that Nelson had engaged in a willful and blatant violation of § 211.13(f). Nelson was not using the regulations; it

was abusing them.

IV. INJUNCTIVE RELIEF

Nelson does not challenge the correctness of the district court's award of damages, assuming that both jurisdiction and the district court's interpretation of § 211.13(f) are correct. Nelson does, however, challenge the injunctive relief reducing its base period allocation. We hold that the injunctive relief was appropriate in this case.

Nelson first argues that the district court erred in failing to establish a fixed standard, defining both the [13] length of time a jobber must fail to supply DOE assigned accounts and the percentage of allocations not supplied, before the obligation to downward certify accrues. There is no

such prerequisite for granting relief here. The regulation stated the standard: when a jobber's needs decline. The facts in this case present a clear violation of that standard. It was unnecessary for the district court or for this court to decide on what lesser presentation injunctive relief would or would not also be available.

The trial record establishes fifteen specific retail outlets for which Nelson had DOE assignment orders but which it did not supply. The district court accordingly reduced Nelson's allocation from Shell by that portion of the annual allocation attributable to the assignment of those stations.[6] This reduction was correct.

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[6]Although Nelson contends that the district court ordered the allocation

Second, Nelson claims that DOE's adoption of a new base period, 44 Fed. Reg. No. 140, 42549 (July 19, 1979), invalidates the injunctive relief. Nelson's argument, were we to accept it, would cause DOE's adoption of a new base period to pardon prior illegal conduct and reward violators of the regulations. We cannot accept such an argument. DOE's adoption of the new base period was made "to reflect market realities," but the changes brought about by Nelson's abusive conduct are not the type of "market reality" that DOE intended to accommodate. The Preamble to DOE's Activation Order No. 1,

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(cont'd 6) reduced by the total amount of gasoline attributable to these assignments and unpurchased over the two and one-half year period, September, 1976 to May, 1979, this contention is incorrect.

44 Fed. Reg. 11,202 (Feb. 28, 1979), which changed the base period, demonstrates that the new base period was established to take into account changes in distribution patterns resulting from normal competitive market forces which had caused the business of certain firms to expand since 1972, while that of other firms had [14] declined. This had resulted in the redistribution of surplus gasoline on a regular basis. Recognition of the fact that wholesaler purchaser-resellers had gasoline which they were redistributing among retail outlets does not support Nelson's position. It merely shows that with respect to customers for whom no upward certification was received, there were changes in demand which the wholesale purchaser-reseller was free to

deal with.

The judgment in this case did not involve redistributed surplus. It involved gasoline obtained by Nelson from Shell under false pretenses. The change in the base period was not intended to legitimate and continue this type of change in supply relationships violative of federal law.

The injunctive relief merely acts to take away from Nelson that portion of its allocation that it should have downward certified. Nelson is put in the position it would have been in had it complied with DOE regulations. The judgment enforces DOE allocation regulations. The judgment enforces DOE allocation regulations and carries out the allocation scheme that the regulations were designed to establish and foster.

V. RULINGS ON NELSON'S COUNTERCLAIMS

Nelson challenges the district court's dismissal of two of its counterclaims. It also challenges the disposition of its third counterclaim. We find no error.

Nelson's claim that Shell unlawfully changed Nelson's credit terms in June, 1973 by changing the location to which Nelson was required to deliver credit card invoices was properly dismissed as barred by the applicable three year California statute of limitations. Cal. C.C.P. §§ 340(1), 338 (1); Ashland Oil Co. of Cal. v. Union Oil Co. of Cal., Em. App., 1977, 567 F.2d 984. The counterclaim disclosed on its face that the challenged conduct [15] occurred on June 20, 1973,

and Nelson's counterclaim was filed on April 20, 1979.

Nelson's claim that Shell had violated DOE regulations prohibiting retaliatory action by allegedly filing this action in retaliation for Nelson's state court unfair competition suit did not state a claim on which relief could be granted and was, therefore, properly dismissed. 10 C.F.R. § 201.61 bars only retaliation for exercise of rights under the Emergency Petroleum Act or regulations pursuant to that Act. Because Nelson's state law unfair competition action was not such an exercise of rights, the counterclaim was fatally defective.

The district court ruled in favor of Shell after trial on Nelson's counterclaim alleging discrimination in

the redistribution of surplus or "underlifted" gasoline during the period April, 1975 through July, 1976. Nelson relies on DOE Interpretation 1977-41, 42 Fed. Reg. No. 232, 61273 (December 2, 1977), to challenge this ruling. 10 C.F.R. § 211.10(g)(5) governs the manner in which a supplier may redistribute underlifted gasoline. Interpretation 1977-41 requires only that this redistribution be non-discriminatory, not that an equal percentage share of the gasoline be given to each customer or group of customers.

During the period to which Nelson's claim relates, Shell redistributed its underlifted gasoline by subclasses--to direct supplied retail customers the amount of underlifted product that was created by that subclass, to wholesale

jobbers the amount of underlifted product that was created by that subclass, etc. The district court found that this proportional method of redistribution was not unlawfully discriminatory but instead was fair, proper and rational. We agree.

Affirmed.

APPENDIX B

DENIAL OF NELSON OIL COMPANY'S PETITION FOR REHEARING, TECA, No. 9-47, September 2, 1980

TEMPORARY EMERGENCY COURT OF APPEALS

OF THE UNITED STATES

No. 9-47

SHELL OIL COMPANY,

Plaintiff-Appellee,

v.

NELSON OIL COMPANY, INC.,

Defendant-Appellant.

BEFORE THE T.E.C.A. COURT:

Upon consideration of Appellant Nelson Oil Company, Inc.'s Petition for Rehearing and Suggestion for Rehearing en banc, it is ORDERED that said Petition is DENIED. The mandate will issue on September 9, 1980.

FOR THE COURT:

Ruth H Jacobson

Clerk

By: /s/ Richard D.

Dumont

Deputy Clerk

September 2, 1980

APPENDIX C

FINDINGS OF FACT AND CONCLUSIONS OF LAW, U. S. DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA (Hon. Manuel Real), SHELL OIL COMPANY v. NELSON OIL COMPANY, CV 79-694-R, filed November 23, 1979

FILED

NOV 23 1979

CLERK, U. S. DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

BY DEPUTY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SHELL OIL COMPANY, a Delaware corporation, Plaintiff, vs. NELSON OIL COMPANY, A California corporation, Defendant.	CV 79-694-R FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

1. Plaintiff Shell is a corporation organized under the laws of the State of

Delaware, with its principal place of business at One Shell Plaza, Houston, Texas. Shell is qualified to, and does, transact business in the State of California. [2] Shell is engaged in the marketing of petroleum products, including motor fuel, to both wholesale jobbers and retail service station outlets in the State of California.

2. Defendant Nelson is a California corporation qualified to do business in that state, with offices at 1403 Gaylord Street, Long Beach, California, and a bulk plant at 344 East Bryant Street, Banning, California. Nelson is an independent wholesale jobber of Shell branded gasoline and other products to retail service station outlets and other customers, including sales to customers at retail service stations

operated by Nelson. By nature of its operations, Nelson is both a supplier and a wholesale purchaser-reseller of motor gasoline as said terms are defined by regulations promulgated by the United States Department of Energy ("DOE").

3. The facts giving rise to this action occured in substantial part within the Central District of California and the claims asserted arise under federal statutes and regulations.

4. Shell has had a business relationship with Nelson as a wholesale jobber in Banning, California, for many years. On or about March 1, 1976, Shell and Nelson entered into the most recent jobber contract between the parties. That contract provided for the sale of Shell petroleum products, in-

cluding motor fuel, to Nelson, and authorized Nelson to use Shell's trademarks in connection with the sale of such products for the term of the contract. The contract provided the maximum amount of gasoline which Shell was obligated to supply to Nelson each month pursuant [3] to said contract, which amounts were approximately 494,500 gallons per month or 5.9 million gallons annually.

5. DOE regulations, 10 C.F.R. Part 211, promulgated under the Economic Stabilization Act and the Emergency Petroleum Allocation Act, govern the amount of motor gasoline which a supplier is required to allocate and sell to its customers. Such allocation amounts are based on the historic or base period use of such customers. Until the

amendment of the current DOE regulations in March, 1979, the "base period" for establishing monthly allocations was the corresponding month of 1972. In March, 1979, the base period under the DOE regulations was changed, and the current regulations made the base period the corresponding month during the period November 1, 1977 through October 31, 1977.

6. On at least twenty-nine occasions since March 1, 1976, Nelson has received from DOE orders assigning new wholesale purchasers, i.e., retail service stations, to Nelson pursuant to the provisions of 10 C.F.R. §211.12, and has thereafter requested that its allocation of gasoline from Shell be increased pursuant to the provisions of 10 C.F.R. §211.13, so as to supply such

new customers. In each instance, Nelson's request for additional gasoline was granted by Shell.

7. Each of the DOE assignment orders specifies the specific retail service station which is being assigned and the allocation volume which Nelson, the new supplier, is obligated to provide to the assigned customer at that location.

[4] 8. In applications submitted to DOE with regard to the requests for assignment of a new supplier, Nelson, as the prospective new supplier, states to DOE that it is a willing supplier of the retail service station making the application. (The applications are submitted by using a DOE form known as "FEO-17.") For each of the twenty-nine retail service stations concerning

which DOE orders have been entered, Nelson has signed an FEO-17, or has otherwise notified DOE of the fact that it is a willing supplier of the applicant and will supply to the applicant the volume of gasoline set forth in the applications and the subsequent DOE assignment orders.

9. With regard to each assignment order received by Nelson from DOE, Nelson has sought and received from Shell an upward adjustment in its monthly base period allocation, which was upwardly adjusted by the amounts of gasoline specified in each respective assignment order.

10. As a result of such upward adjustments, Nelson's monthly allocations increased substantially, and Shell was obliged to and did supply to Nelson its

full monthly allocations or allocation fraction (where applicable) for each month during the period January, 1976, through May, 1979.

11. In numerous instances, Nelson did not supply the gasoline it received from Shell as a result of DOE assignment orders to the retail outlet specified in the DOE assignment [5] orders, nor did it return such gasoline to Shell, but rather diverted such gasoline to other uses not provided for or authorized by the DOE assignment orders.

12. The retail outlets, and the annual allocation of each, for which Nelson received DOE assignment orders but to which Nelson has not supplied gasoline on a regular basis, and in some instances has never supplied gasoline at all, are:

	Service Station	Yearly Allocation (Gallons)
(1)	Mars Oil Co. 895 4th Avenue Yuma, Arizona	1,824,443
(2)	Robin Oil Co. 1796 W. Highland San Bernardino, California	537,631
(3)	Robin Oil Co. 295 E. Holt Pomona, California	2,412,000
(4)	Robin Oil Co. 1207 E. Mission Pomona, California	2,412,000
(5)	Sav-Mor Oil Co. 2905 Riverside Bloomington, California	753,443
(6)	Sav-Mor Co. 2415 Ramsey Banning, California	534,111

[6]	Service Station	Yearly Allocation (Gallons)
(7)	Sav-Mor Oil Co. 1187 Mission Pomona, California	721,409
(8)	Sav-Mor Oil Co. 1008 Highland San Bernardino, California	671,207
(9)	Sav-Mor Oil Co. 9432 Sierra Fontana, California	705,437
(10)	Sav-Mor Oil Co. 2238 Hamner Norco, California	1,246,714
(11)	Sav-Mor Oil Co. 315 State San Jacinto, California	668,222
(12)	Sav-Mor Oil Co. 447 Foothill Monrovia, California	435,028

(13)	Target Enterprises 2501 Canada Glendale, California	465,000
(14)	Target Enterprises 2155 S. Atlantic City of Commerce, Ca.	1,995,264

[7]

Service Station	Yearly Allocation (Gallons)
(15) Target Enterprises 15407 Crenshaw Gardena, California	2,554,020
Total:	17,935,929

13. Under the provisions of 10 C.F.R. §211.13(f), Nelson was obligated to use the gasoline it received from Shell as a result of the aforementioned upward adjustments only for the purpose set forth in each respective assignment order, i.e., to supply the amounts of gasoline set forth in the order to the

retail outlet named in the order; and not to divert that gasoline to other uses. Nelson was also obligated by 10 C.F.R. §211.13(f) to submit to Shell a downward certification, so that Nelson's base period allocation could be appropriately adjusted downward, in the event Nelson did not need the gasoline it received from Shell pursuant to a DOE assignment order for the purpose set forth in that order.

14. In spite of the fact that Nelson has not supplied on a regular basis the fifteen retail service stations identified above, Nelson has never submitted to Shell a downward certification for any of those stations, but rather has continued to draw from Shell gasoline which was to have been supplied to those stations, and has di-

verted that gasoline to other uses.

[8] 15. With regard to the eight service stations operated by Sav-Mor Oil Company, Nelson was notified by Sav-Mor in September, 1976, that Sav-Mor wished to cancel its supply agreement with Nelson and withdraw the applications for assignment by DOE of Nelson as Sav-Mor's supplier. In spite of this notice to Nelson of Sav-Mor's termination of the supplier relationship it had with Nelson, and in spite of the fact that Nelson has never supplied on a regular basis any of the Sav-Mor stations, Nelson requested that Shell make available, and Nelson drew from Shell, the amounts of gasoline specified in the DOE orders for supply to the Sav-Mor stations, failed to downward certify such amounts to Shell, and di-

verted such gasoline to other uses.

16. Nelson's actions in diverting gasoline obtained from Shell pursuant to DOE assignment orders from the customers named in said orders to other uses constitute willful and blatant violations of the gasoline allocation regulations promulgated by DOE, and Shell has been damaged thereby

17. During the period from September, 1976 through May, 1979, Nelson has willfully and unlawfully diverted a total of 20,440,695 gallons of gasoline, which figure represents the total undelivered allocations for the eight Sav-Mor stations identified in paragraph 12 above, and the undelivered allocations, less thirty percent (pursuant to the redirection provisions of 10 C.F.R. §211.106(b)(3)(ii), for the

three Target stations, the three Robin stations, and the one Mars station [9] identified in paragraph 12 above. The total gallonage figures for each are as follows:

Sav-Mor	13,907,630
Robin	2,136,618
Mars	2,355,044
Target	2,041,403

18. As a result of Nelson's willful and blatant violations, Shell has been denied this gasoline which otherwise would have been available for distribution to Shell's customers, many of which paid Shell a higher price than Nelson. Shell has suffered an average loss of $.0302 on each illegally diverted gallon of gasoline, or a total of $617,308.98.

19. Nelson's willful and blatant

violations of federal regulations give Shell proper and adequate grounds for terminating Nelson's jobber franchise and supply agreement under the Petroleum Marketing Practices Act.

20. Nelson's counterclaim for damages with regard to Shell's method of redistributing underlifted or surplus gasoline is limited to the period April, 1975 through July, 1976.

21. During the period April, 1975 through July, 1976, Shell redistributed its underlifted gasoline by making such underlifted amounts available to branded wholesaler purchaser-resellers by subclass, i.e., Shell redistributed to direct supplied retail customers the amount of underlifted product that was created by that subclass, and Shell redistributed to wholesale jobbers the

amount of underlifted product that was created by that subclass.

[10] 22. Shell's method of redistributing underlifted gasoline was not discriminatory, but was a fair, proper, and rational method of accomplishing such redistribution.

23. Nelson is a Shell jobber of motor gasoline and, as such, is a wholesale purchaser-reseller as defined in 10 C.F.R. Section 211.51. At all times relevant to this action, Nelson and Shell have had a supplier-purchaser relationship as set forth in 10 C.F.R. Section 211.9, and pursuant to such regulation, Nelson as Shell's customer, is entitled to receive gasoline from Shell in accordance with the applicable scheme set forth by the DOE regulations.

24. Nelson is a supplier as that

term is used in C.F.R. Section 211.10.

25. 10 C.F.R. Section 211.12 applies to the relationship between Shell and Nelson as well as to that between Nelson and its allocated customers.

CONCLUSIONS OF LAW

26. Jurisdiction and venue lie in this Court under the Economic Stabilization Act of 1970, 12 U.S.C. Section 1904 note; the Emergency Petroleum Allocation Act of 1973, 15 U.S.C. Sections 751 et seq.; the Petroleum Marketing Practices Act ("PMPA"), 15 U.S.C. Sections 1331, 1332, 1337, 2201 and 2202; and the Federal Rules of Civil Procedure, Rule 57; and the venue provisions of 28 U.S.C. Section 1391.

27. DOE gasoline allocation regulations, 10 C.F.R. Section 211.13(f), equire that a wholesale purchaser-

reseller who receives a DOE order for assignment as a base period supplier of a retail service station, and who receives an upward adjustment [11] in its base period allocation from its supplier as a result of that assignment, must use that increase in allocation only for the purpose set forth in the order, i.e., to supply the retail station named in the order; and that such increase in allocation not be diverted to other purposes. The regulations also require that the wholesale purchaser-reseller provide its supplier with a downward certification if it does not need the increase in allocation for the purposes specified in the order.

28. Nelson has willfully and blatantly violated DOE gasoline allocation regulations by diverting to uses other

than those set forth in each DOE gasoline assignment order [12] gasoline received from Shell pursuant to upward adjustments to Nelson's base period resulting from such assignment orders.

29. Because of Nelson's violations of the DOE Regulations, Nelson's base period allocation from Shell would be reduced by the gross amounts of the DOE allocation orders for the fifteen retail outlets identified in paragraph 12 above, or 17,935,929 gallons.

30. Nelson's willful and blatant violations of DOE gasoline allocation regulations are proper and sufficient grounds under Sections 2802(b)(1)(B) and 2802(c)(11) of the Petroleum Marketing Practices Act for the termination of Nelson's jobber franchise and supply agreement.

31. 10 C.F.R. § 211.10(g)(5) provides that a supplier may redistribute its surplus or underlifted gasoline at its discretion, provided that all branded and unbranded independent marketers which are entitled to receive an allocation from the supplier shall be supplied, in the aggregate, at least the same proportion of the suppliers' surplus or underlifted product as the total unadjusted base period volumes of branded and unbranded independent marketers, which are entitled to receive an allocation from that supplier, bear to the total unadjusted base period volumes of all of the supplier's purchasers which are entitled to receive an allocation from that supplier.

32. Shell's method of redistributing underlifted gasoline during the

period April, 1975 through July, 1976 was not [13] discriminatory, but was fair, proper, and reasonable, and in compliance with 10 C.F.R. § 211.10(g)(5).

Dated at Los Angeles, California, this 21st day of November, 1979.

/s/
United States District Judge

APPENDIX D

JUDGMENT, U. S. DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA (Hon. Manuel Real), SHELL OIL COMPANY v. NELSON OIL COMPANY, CV 79-694-R, entered December 5, 1979

LODGED

Nov 9 1979

CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BY DEPUTY

FILED

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CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BY DEPUTY

ENTERED

DEC 5 1979

CLERK, U.S. DISTRICT COURT
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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SHELL OIL COMPANY, a Delaware corporation, Plaintiff, v. NELSON OIL COMPANY, a California corporation.	NO. 79 CV 694R JUDGMENT

This action came on for trial before the Court, Honorable Manuel L. Real presiding, and the issues having been duly tried and a decision and Findings of Fact and Conclusions of Law having been duly rendered,

[2] IT IS ORDERED AND ADJUDGED:

That the plaintiff Shell Oil Company recover of defendant Nelson Oil Company, Inc. the sum of $617,308.98, plus interest in the amount of 7% from the date of this judgment, plus its costs of this action;

That defendant Nelson Oil Company, Inc.'s annual gasoline allocation from Shell pursuant to Department of Energy regulations is hereby ordered reduced by 17,935,929 gallons;

That plaintiff Shell Oil Company has sufficient and proper grounds to

terminate the jobber franchise of defendant Nelson Oil Company, Inc. under the Petroleum Marketing Practices Act, upon the giving of notice as required by the Act; and

That defendant Nelson Oil Company, Inc. take nothing, and that its counterclaim against plaintiff Shell Oil Company be dismissed with prejudice.

Dated at Los Angeles, California, this 21st day of November, 1979.

/s/ MANUEL L. REAL
United States District Judge

Clerk of the Court

APPENDIX E

ORDER TO REMAND (28 U.S.C. 1447(c)), U. S. DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA, (Hon. Robert Firth), NELSON OIL COMPANY, INC. v. SHELL OIL COMPANY, et al., CV 78-3790-RF, entered December 27, 1978;

and

ORDER PURSUANT TO RULE 60, U. S. DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA, (Hon. Robert Firth), NELSON OIL COMPANY, INC. v. SHELL OIL COMPANY, CV 78-3790-RF, filed July 25, 1979

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DEC 27 1978

CLERK, U.S. DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

BY DEPUTY

ENTERED

DEC 28 1978

CLERK, U.S. DISTRICT COURT

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

NELSON OIL COMPANY, INC., a California corporation, Plaintiff, -vs- SHELL OIL COMPANY, a Delaware corporation; CHARLES de BRETTEVILLE, individually; J. P. BOYD, individually; D. T. GALLAGHER, individually; R. W. SHERWOOD, individually; M. C. SILK, individually; DALE LINDSLEY, individually; and DOES 1 through 1000, inclusive, Defendants.	NO. 78 3790 RF (TX) ORDER TO REMAND (28 U.S.C. 1447 (c))

ORDER

Upon consideration of the pleadings filed in support of and in opposition to the motion to remand; the verified petition for removal; and oral argument at the hearing on the motion to remand:

[2] IT IS ORDERED that pursuant to 28 U.S.C. 1447(c), and upon the grounds set forth therein, the Motion to Remand is granted.

IT IS FURTHER ORDERED that pursuant to 28 U.S.C. 1447(c), a certified copy of this Order of Remand shall be mailed by the Clerk of this Court to the Clerk of the Superior Court in and for the County of Riverside, State of California, from which this action was removed.

IT IS FURTHER ORDERED that the Clerk shall mail a copy of this Order to counsel of record.

DATED: Dec 27 1978

/s/ ROBERT FIRTH
Judge, United States District Court

FILED

JUL 25 1979

CLERK, U. S. DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

BY DEPUTY

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

NELSON OIL COMPANY, INC., a California corporation, Plaintiff, vs. SHELL OIL COMPANY, a Delaware corporation, et al, Defendants.	No. CV 78-3790 RF (TX) ORDER PURSUANT TO RULE 60

IT IS HERLBY ORDERED, that the minute order dated December 14, 1978, and Order of Remand dated December 27, 1978, be corrected to show that the counterclaim of Shell Oil Company was remanded to the Superior Court in and for Riverside County, State of California, along with all other proceedings in this action.

Dated: JUL 25 1979

/s/ ROBERT FIRTH
ROBERT FIRTH
JUDGE, UNITED STATES DISTRICT COURT

APPENDIX F

ORDER TO REMAND (28 U.S.C. 1447(c)), U. S. DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA (Hon. David Williams), NELSON OIL COMPANY, INC. v. SHELL OIL COMPANY, et al., CV 80-03184-DWW, filed August 19, 1980

FILED

AUG 19 1980

CLERK, U.S. DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

NELSON OIL COMPANY, INC.	
Plaintiff,	No. 80-03184 (DWW)
v.	ORDER TO REMAND
SHELL OIL COMPANY, et al.,	(28 U.S.C. 1447(c))
Defendants.	

ORDER

Upon consideration of the pleadings filed in support of and in opposition to the motion to remand; the verified petition for removal; and oral argument at the hearing on the motion to remand:

[2] IT IS ORDERED that pursuant to 28 U.S.C. 1447 (c), and upon the grounds set forth therein, the Motion to Remand is granted.

IT IS FURTHER ORDERED that pursuant to 28 U.S.C. 1447 (c), a certified copy of this Order of Remand shall be mailed

by the Clerk of this Court to the Clerk of the Superior Court in and for the County of Los Angeles, State of California, from which this action was removed.

IT IS FURTHER ORDERED that the Clerk shall mail a copy of this Order to counsel of record.

DATED: 8/19/80 /s/ DAVID W. WILLIAMS
Judge, United States
District Court

APPENDIX G

ECONOMIC STABILIZATION ACT OF 1970,
12 U.S.C. §1904, note §§210, 211
[pertinent parts]

§210. Suits for damages or other relief

"(a) Any person suffering legal wrong because of any act or practice arising out of this title, or any order or regulation issued pursuant thereto, may bring an action in a district court of the United States, without regard to the amount in controversy, for appropriate relief, including an action for a declaratory judgment, writ of injunction (subject to the limitations in section 211), and/or damages.

"(b) In any action brought under subsection (a) against any person renting property or selling goods or services who is found to have overcharged the plaintiff, the court may, in its discretion, award the plaintiff reasonable attorney's fees and costs, plus

whichever of the following sums is greater:

"(1) an amount not more than three times the amount of the overcharge upon which the action is based, or

"(2) not less than $100 or more than $1,000;

except that in any case where the defendant establishes that the overcharge was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to the avoidance of such error the liability of the defendant shall be limited to the amount of the overcharge: Provided, That where the overcharge is not willful within the meaning of section 208(a) of this title, no action for an overcharge may be brought by or on behalf of any person unless such

person has first presented to the seller or renter a bona fide claim for refund of the overcharge and has not received repayment of such overcharge within ninety days from the date of the presentation of such claim.

"(c) For the purposes of this section, the term 'overcharge' means the amount by which the consideration for the rental of property or the sale of goods or services exceeds the applicable ceiling under regulations or orders issued under this title.

§211. Judicial review

"(a) The district courts of the United States shall have exclusive original jurisdiction of cases or controversies arising under this title, or under regulations or orders issued thereunder, notwithstanding the amount

in controversy; except that nothing in this subsection or in subsection (h) of this section affects the power of any court of competent jurisdiction to consider, hear, and determine any issue by way of defense (other than a defense based on the constitutionality of this title or the validity of action taken by any agency under this title) raised in any proceeding before such court. If in any such proceeding an issue by way of defense is raised based on the constitutionality of this title or the validity of agency action under this title, the case shall be subject to removal by either party to a district court of the United States in accordance with the applicable provisions of chapter 89 of title 28, United States Code [chapter 89 of Title 28].

APPENDIX H

EMERGENCY PETROLEUM ALLOCATION ACT OF 1973, 15 U.S.C. §751 et seq. [pertinent parts]

§751. Findings and purpose

(a) The Congress hereby determines that --

(1) shortages of crude oil, residual fuel oil, and refined petroleum products caused by inadequate domestic production, environmental constraints, and the unavailability of imports sufficient to satisfy domestic demand, now exist or are imminent;

(2) such shortages have created or will create severe economic dislocations and hardships, including loss of jobs, closing of factories and businesses, reduction of crop planting and harvesting, and curtailment of vital public services, including the transportation of food and other essential goods; and

(3) such hardships and dislocations jeopardize the normal flow of commerce

and constitute a national energy crisis which is a threat to the public health, safety, and welfare and can be averted or minimized most efficiently and effectively through prompt action by the Executive Branch of Government.

(b) The purpose of this Act [15 USCS §§751 et seq.] is to grant to the President of the United States and direct him to exercise specific temporary authority to deal with shortages of crude oil, residual fuel oil and refined petroleum products or dislocations in their national distribution system. The authority granted under this Act [15 USCS §§751 et seq.] shall be exercised for the purpose of minimizing the adverse impacts of such shortages or dislocations on the American people and the domestic economy.

§753. Mandatory allocation

(a) Regulation providing for mandatory allocation of crude oil, residual fuel oil, and refined petroleum products. Not later than fifteen days after the date of enactment of this Act [enacted Nov. 27, 1973], the President shall promulgate a regulation providing for the mandatory allocation of crude oil, residual fuel oil, and each refined petroleum product, in amounts specified in (or determined in a manner prescribed by) and at prices specified in (or determined in a manner prescribed by) such regulation. Subject to subsection (d), such regulation shall take effect not later than fifteen days after its promulgation. Such regulation shall apply to all crude oil, residual fuel oil, and refined petroleum pro-

ducts in or imported into the United States.

(b) Contents of regulation; price provisions; passthrough of increases; allocation to users of other fuels not obtainable. (1) The regulation under subsection (a), to the maximum extent practicable, shall provide for --

(A) protection of public health (including the production of pharmaceuticals), safety, and welfare (including maintenance of residential heating, such as individual homes, apartments, and similar occupied dwelling units), and the national defense;

(B) maintenance of all public services (including facilities and services provided by municipally, cooperatively, or investor owned utilities or by any State or local government or authority,

and including transportation facilities and services which serve the public at large);

(C) maintenance of agricultural operations, including farming, ranching, dairy, and fishing activities, and services directly related thereto;

(D) preservation of an economically sound and competitive petroleum industry; including the priority needs to restore and foster competition in the producing, refining, distribution, marketing, and petrochemical sectors of such industry, and to preserve the competitive viability of independent refiners, small refiners, nonbranded independent marketers, and branded independent marketers;

(E) the allocation of suitable types, grades, and quality of crude oil to

refineries in the United States to permit such refineries to operate at full capacity;

(F) equitable distribution of crude oil, residual fuel oil, and refined petroleum products at equitable prices among all regions and areas of the United States and sectors of the petroleum industry, including independent refiners, small refiners, nonbranded independent marketers, branded independent marketers, and among all users;

(G) allocation of residual fuel oil and refined petroleum products in such amounts and in such manner as may be necessary for the maintenance of, exploration for, and production or extraction of --

(i) fuels, and

(ii) minerals essential to the re-

quirements of the United States, and for required transportation related thereto.

(H) economic efficiency; and

(I) minimization of economic distortion, inflexibility, and unnecessary interference with market mechanisms.

* * *

(c)(3) The President shall, by order, require such adjustments in the allocations of crude oil, residual fuel oil, and refined petroleum products established under the regulation under subsection (a) as may reasonably be necessary (A) to accomplish the objectives of subsection (b), or (B) to prevent any person from taking any action which would be inconsistent with such objectives.

(4) The President may, by order, re-

quire such adjustments in the allocations of refined petroleum products and crude oil established under the regulation under subsection (a) as he determines may reasonably be necessary --

(A) in the case of refined petroleum products (i) to take into consideration market entry by branded independent marketers and non-branded independent marketers during or subsequent to calendar year 1972, or (ii) to take into consideration expansion or reduction of marketing or distribution facilities of such marketers during or subsequent to calendar year 1972, and

(B) in the case of crude oil (i) to take into consideration market

entry by independent refiners and small refiners during or subsequent to calendar year 1972, or (ii) to take into consideration expansion or reduction of refining facilities of such refiners during or subsequent to calendar year 1972.

Any adjustments made under this paragraph may be made only upon a finding that, to the maximum extent practicable, the objectives of subsection (b) of this section are attained.

§754

(b) The President may delegate all or any portion of the authority granted to him under this Act [15 USCS §§751 et seq.] to such officers, departments, or agencies of the United States, or to any State (or officer thereof), as he deems appropriate.

§760. Re-evaluation of regulation under §753(a)

(a) Not later than 60 days after the date of enactment of this section [enacted Dec. 22, 1975], the President shall give appropriate notice and afford interested persons an opportunity to present written and oral data, views, and arguments respecting the appropriateness of, or the continuing need for, the application of any provision of the regulation promulgated under section 4(a) [15 USC §753(a)] as such provision relates to the attainment of the objectives specified in section 4(b)(1) of section 4 [15 USC §753(b)(1)]. A transcript shall be kept of any such oral presentations of data, views, and argument.

(b) The President shall, after consi-

deration of such written and oral presentations and such other information as may be available to him --

(1) analyze such presentations and report thereon to the Congress within 120 days after the date of enactment of this section [enacted Dec. 22, 1975]; and

(2) shall promulgate, pursuant to the limitations and authority under section 12 [15 USCS §760a], such amendment, or amendments, to the regulation promulgated under section 4(a) [15 USCS §753(a)] as he determines are necessary or appropriate --

(A) to modify any provisions of such regulation in a manner which is consistent with the attainment, to the maximum extent practicable, of objectives specified in section

4(b)(1) [15 USCS §753(b)(1)]; or

(B) to eliminate any provisions of such regulation no longer necessary to provide for the attainment of such objectives.

APPENDIX I

28 U.S.C. §1447(d)

§1447. Procedure after removal generally

(d) An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise.

APPENDIX J

10 C.F.R. §211.13(f)

10 C.F.R. § 211.13(f): Adjustments to base period volume.

(f) Certifications and downward adjustments of base period uses. The chief executive officer (or his authorized agent) of a purchaser applying to a supplier for an adjustment under this section shall certify such application for accuracy. Such application shall contain a statement that increased allocations shall be used only for the purpose stated in the application, shall not be diverted for other uses; and that if its needs decline, the purchaser shall file an amended application for a downward adjustment to its base period use.